UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X

JOSEPH ROSILLO,

Plaintiff,

-against-

THE CITY OF NEW YORK,
HARUN MIAH,
JOHN DOES ## 1-2

Defendants
---X

COMPLAINT

11-cv-3549 (LTS)

JURY TRIAL DEMANDED

NATURE OF ACTION

1. This action is brought by Plaintiff to recover damages for violations of Plaintiff's rights pursuant to 42 U.S.C. § 1983.

THE PARTIES

2. Plaintiff is a resident of New York, New York.

3. The City of New York is a municipal corporation whose residence is in all five counties of New York City.

4. The individual defendants are employees of the New York City Police Department stationed, upon information and belief, at the 71st Precinct in Brooklyn.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this district pursuant to 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States, among them 42 U.S.C. § 1983.

6. Venue is properly placed in this district pursuant to 28 U.S.C. § 1391(c) in that the City of New York is deemed to reside in this jurisdiction.

FACTUAL ALLEGATIONS UNDERLYING PLAINTIFF'S CLAIMS

7. At 6 PM on December 4, 2010 at an Associated Supermarket on Flatbush Avenue near the intersection of Fenimore and Flatbush Avenues, plaintiff was obeying all laws.

8. He exited the supermarket to let his Goddaughter's mother, who was in a parked car outside, know that he had that found her shopping list in the store. Nothing plaintiff had done gave the officers any reasonable suspicion that plaintiff was in any way involved in any criminal activity.

9. An unmarked Nissan van was parked nearby and at the time plaintiff signaled to his friend, three unmarked men emerged from the van. They did not display badges. They ran up to plaintiff and grabbed him. Without asking him anything , defendants held up plaintiff's arms, pushed him into building, and started rifling through his pockets.

10. At that time they identified themselves as police. A heavyset Caucasian officer said to plaintiff "Where's the pipe?" Plaintiff protested that there was no pipe and volunteered that he was a transit worker.

11. There were two other officers, one an unnamed African American, and the other one defendant Harun Miah.

12. Miah pulled out plaintiff's wallet, saw his ID and said, "Oh shit, he is a transit worker.

13. The black officer continued to rifle through plaintiff's pockets. Plaintiff, who suffers from herniated disks and other musculoskeletal problems and anxiety, had two pill boxes in his possession that contained, among them non-prescription and prescription medications, including four Xanax pills and two Percosets that had been legally prescribed for him.

14. Plaintiff advised the defendants that he had prescriptions for these medications, "I have prescriptions for them."

15. Nevertheless, the police officers refused to contact plaintiff's doctors, did no investigation into whether the medications found were prescribed for plaintiff and arrested him and charged him illegal possession.

16. He was held in a van for two hours no windows no air and then finally brought to 71st precinct searched, held in a cell and given a desk appearance ticket.

17. The district attorney declined to prosecute the action, but only after plaintiff appeared in court. The charges against plaintiff were terminated in his favor. Nevertheless, he was humiliated by the experience, which almost cost him his job. He now sues for redress.

FIRST CAUSE OF ACTION
FALSE ARREST UNDER 42 U.S.C. § 1983

18. Plaintiff repeats and realleges the allegations set forth in all preceding paragraphs.

19. Plaintiff was arrested without probable cause. The conduct of defendants violated plaintiff's right to be free of unreasonable and unlawful seizure, secured by the Fourth and Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983.

20. By virtue of the foregoing, Plaintiff has been damaged.

SECOND CAUSE OF ACTION
FAILURE TO INSTRUCT, SUPERVISE, AND CONTROL DIRECTED AGAINST THE CITY OF NEW YORK UNDER AND COGNIZABLE UNDER 42 U.S.C. § 1983

21. Plaintiff repeats and realleges the allegations set forth in all preceding paragraphs as if fully set forth herein.

22. At all times relevant to this complaint, defendants as officers of the City of New York Police Department, was acting under the direction and control of the City of New York, which acted through its agents and employees who were responsible for making policy of the police department, its officers and operations, and the individually named defendants were acting pursuant to either official policy or the practice, custom and usage of the City of New York and its Police Department.

23. Acting under color of law, by and through the policy makers of the City of New York and pursuant to official policy or custom and practice, the City of New York intentionally, knowingly, recklessly, or with deliberate indifference to the rights of the inhabitants of the City of New York, failed to instruct, supervise, control, and/or discipline, on a continuing basis, Defendants in the performance of their duties to refrain from

a. arresting individuals without probable cause;
b. committing perjury and otherwise filing false instruments with impunity.

24. The City of New York had knowledge of or, had it diligently exercised its duties to instruct, supervise, control, and discipline on a continuing basis, should have had knowledge that the wrongs that were done, as heretofore alleged, or other unlawful or unconstitutional acts, were going to be committed. Defendant City of New York had power to prevent the

commission of said wrongs, could have done so, and intentionally, knowingly, or with deliberate indifference to the rights of the inhabitants of the City of New York failed or refused to do so.

25. As a result of the foregoing, plaintiff was deprived of his right to be secure in his person, against unreasonable seizure of his person and against the use of excessive force in violation of the Eighth, Fourth and Fourteenth Amendments of the Constitution and 42 U.S.C. § 1983, and has been damaged.

THIRD CAUSE OF ACTION
FAILURE TO INTERCEDE AND PREVENT THE VIOLATION OF CONSTITUTIONAL RIGHTS 42 U.S.C. § 1983

26. Plaintiff repeats and realleges the allegations set forth in all preceding paragraphs as if fully set forth herein.

27. While plaintiffs' rights were being violated, each co-defendant did nothing to prevent these violations of plaintiff's rights.

28. The co-defendants had an opportunity to intercede on behalf of plaintiff and prevent the use of excessive force and unreasonable seizure of his person in violation of the Fourth and Fourteenth Amendment.

29. As a result of the foregoing, plaintiff was deprived of his right to be secure in his person, against unreasonable seizure of his person and against the use of excessive force in violation of the Fourth and Fourteenth Amendments of the Constitution and 42 U.S.C. and has been damaged.

WHEREFORE, Plaintiff demands as follows:

A. Compensatory damages;

B. Punitive damages to be determined by the trier of fact;

C. Cost of suit and attorneys fees pursuant to 42 U.S.C. § 1988;

D. Such other relief as the Court may deem just and proper.

Dated: New York, New York
May 23, 2011

/s/

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